

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
(240) 777-6600

<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

**Case No. A-5969**

**PETITION OF NANCY J. AVITABILE AND RICHARD B. EDELMAN**  
(Hearing held April 7, 2004)

**OPINION OF THE BOARD**  
(Effective date of Opinion, May 28, 2004)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.323(b)(2). The petitioners propose to construct a one-story addition that requires an eight (8) foot variance as it is within seventeen (17) feet of the rear lot line. The required setback is twenty-five (25) feet.

The petitioners were represented at the public hearing by Leah Kaufman of Michael Steiner Architects.

The subject property is Lot 41, Block 2, located at 8515 Whittier Boulevard, Bethesda, Maryland, 20817, in the R-90 Zone (Tax Account No. 700668142).

Decision of the Board: Requested variance **denied**.

**EVIDENCE PRESENTED TO THE BOARD**

1. The petitioners propose to construct a 14 x 14 foot one-story addition in the northeast section of the property. The petitioners' lot is 14,800 square feet.
2. Ms. Kaufman testified that the petitioners' property is a trapezoidal-shaped lot, with the residence located in the rear section of the property. Ms. Kaufman testified that the lot has a WSSC easement in the eastern section of the property and that the lot's topography in the western section is at a higher elevation than other areas of the lot.
3. Ms. Kaufman testified that the petitioners have spoken with their neighbors and that their neighbors have no objections to the variance request. See, Exhibit No. 11(c) [neighbors' letter]. Mrs. Kaufman testified that the proposed site for the addition would not be visible to the neighboring properties, and that it could be built elsewhere on the lot without a variance, but would be

visible to the neighboring properties. Ms. Kaufman testified that the addition would be built in an area that has an entrance to the house.

4. Jose E. Camacho, an adjoining neighbor on Lot 30, entered a letter of opposition in the record. Mr. Camacho's letter states that the variance request would diminish the value of his property. See, Exhibit No. 10 [Camacho letter].

## **FINDINGS OF THE BOARD**

Based upon the petitioners' binding testimony and the evidence of record, the Board finds that the variance must be denied. The requested variance does not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) as follows:

- (a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The Board finds that although the shape of the petitioners' lot is distinctive, its shape and topography are characteristics shared with other lots in the immediate neighborhood. See, Exhibit No. 8 [zoning vicinity map]. The Board further finds that the proposed construction could be built in other areas of the property without the need for a variance and that the addition is being built in an area that is most impacted by the constraints imposed by the zoning ordinance.

The Board notes that the petitioners' lot significantly exceeds the minimum lot size for the R-90 Zone and that the WSSC easement is not limited to the petitioners' property.

The petition does not meet the requirements of Section 59-G-1.3(a) and the Board did not consider the other requirements in that section for the grant of a variance. Accordingly, the requested variance of eight (8) feet from the required twenty-five (25) foot rear lot line setback for the construction of a one-story addition is denied.

The Board adopted the following Resolution:

Board Chairman Donald H. Spence, Jr., was necessarily absent and did not participate in this Resolution. On a motion by Donna L. Barron, seconded by Louise L. Mayer, with Angelo M. Caputo and Allison Ishihara Fultz, Presiding Chairman, in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

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Allison Ishihara Fultz  
Presiding Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing  
Opinion was officially entered in the  
Opinion Book of the County Board of  
Appeals this 28th day of May, 2004.

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Katherine Freeman  
Executive Secretary to the Board

**NOTE:**

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.